SUMMIT CO. (M) SDN. BHD.

v.

NIKKO PRODUCTS (M) SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
VC GEORGE J
[CIVIL SUIT NO. C 1151 OF 1982]
30 NOVEMBER 1983

CIVIL PROCEDURE: *Service against corporation - Change of situation of registered office - Whether service at old address good service - Effective date of change for purposes of service - Rules of the High Court 1980, O. 62 r. 4.*

COMPANY LAW: *Registered office - Change of situation - Section 120, Companies Act - Effective date - Whether date of actual change, lodgment of notice of change or registration of notice.*

The plaintiffs sought to effect the service of a writ against the defendant corporation by leaving a copy at No. 42-2A, City Tower, Jalan Alor Kuala Lumpur. Unknown to the plaintiffs the defendants had changed the situation of its registered office to Room 1201, 12th Floor, Komplek Selangor, on 8 February 1982. The defendants had lodged with Registrar of Companies on 24 February 1982 the particulars of the change as required by section 120 of the Companies Act. The registration of the change was not effected until 24 September 1982. When no appearance was entered to the writ, the plaintiffs entered judgment in default, and followed this with execution proceedings. The defendants took out a summons to set aside the judgment on the ground that they had not been served with the writ. The service of the summons was not effected for almost a year.

Held:

[1] The leaving of a copy at the old address was not good service and the judgment must be set aside *ex debito justitiae.* A change of the situation of the registered office takes effect on the day that the actual change is effected. At best it may be argued that until the section 120 notice is given, the company is estopped from relying on the fact of change of registered office.

[2] The delay in effecting the service of the summons did not have the effect of prejudicing the right to have the judgment set aside.

[Judgment set aside.]

Legislation referred to:
Companies Act 1965, ss. 119, 120.
Rules of the High Court 1980, O.62 r.4.

For the defendants/applicants - Wong Ngee Heong; M/s. Low & Lee
For the plaintiffs/respondents - Matthias Chang Wen Chieh; M/s. Suhaimi Khor Zulkifli & Chang

JUDGMENT

VC George J:

The provisions for the service of a writ against a corporation is found in O. 62 r. 4. In the instant case the plaintiffs sought to effect the service of the writ pursuant to r. 4(1)(a), on 1 July 1982, by leaving a copy of it at No. 42-2A City Tower, Jalan Alor, Kuala Lumpur, thought by the plaintiffs to be the registered office of the defendants.

It turned out that unknown to the plaintiffs the defendants had changed the situation of its registered office from No: 42-2A City Tower to Room 1201, 12th Floor, Komplek Selangor on 8 February 1982. Pursuant to the requirements of s. 120 of the Companies Act the company had duly notified the Registrar of Companies of the change by lodging with the Registrar on 24 February 1982 the requisite Form 44 in which the particulars of the change of the registered office was set out. It was said that the registration of this change was not effected until 24 September 1982. (See Exhibit JK1 to the affidavit of James Khor affirmed on 5 July 1983). What was to be understood by that was not clear as I was not aware that a register was maintained by the Registrar of Companies for registering the particulars set out in a Form 44 [as is maintained for example for registering charges created by a company (see ss. 108 and 111 of the Companies Act)]. It perhaps meant that the Form 44 having been lodged on 24 February 1982 was not placed as an enclosure in the file pertaining to the company until 24 September 1982! What I have accepted is that anyone making a search in the file pertaining to the company at the office of the Registrar of Companies prior to 24 September 1982 would have been left with the impression that the registered office of the defendant company continued to be at the said City Tower.

Having left a copy of the writ at No. 42-2A and when no appearance was entered the plaintiffs moved the Court for and entered judgment in default for the amount claimed, interests and costs. That was followed by execution proceedings - land belonging to the defendant company was attached. The defendants claimed they only came to know that a writ had been issued against them as a result of the attachment of the land. They took out a summons to set aside the judgment on the grounds they had not been served with the writ. For reasons not made known to me service of the summons was not effected for almost a year. The summons was adjourned on a number of occasions on the ground that it had not been served.

On behalf of the plaintiffs it was contended that the registered office of the defendants continued to be at No. 42-2A City Tower until "the registration" of the change of address and since "the registration' took place only on 24 September the registered office of the company continued to be at No. 42-2A City Tower until that date and that therefore leaving a copy of the writ at that address was good service.

Section 119 of the Companies Act provides for a company to have a registered office. Section 120 provides for the Registrar to be notified of the situation of the registered office and of any change of the situation of such office within one month after the date of incorporation of the company or of any such change as the case may be. In my view the change of the situation of the registered office (which is what we are concerned with in the instant case) takes effect on the day that the actual change is effected and not on the day of lodgment of the s. 120 notice (since that can be done within 1 month of the actual change)or on the date of "registration" of the s. 120 notice if such an event takes and took place. At best, it may be argued that until the s. 120 notice is given to the Registrar the company would be estopped from relying on the fact of change of registered office.

On 1 July 1982 No. 42 - 2A City Tower was not the registered office of the company and accordingly leaving a copy of the writ at that address was not good service. And accordingly the defendants were entitled to have the default judgment set aside *ex debito justitiae.* That the defendants having taken out the summons did not have it served on the plaintiffs for as

long as they did has not had the effect of prejudicing this right. The judgment was set aside and I ordered the plaintiffs to pay the costs of and incidental to the application to set aside the judgment.

Also found at [1984] 1 CLJ 269